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OFFICE OF PETITIONS

In re Application of
De Fabrega
Application No. 09/754,021
Filed: January 3, 2001
Attorney Docket No. U 012900-8

:DECISION ON PETITION
:UNDER 37 CFR 1.182
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This is a decision on the petition filed June 18, 2001, to delete the priority claim to Panamanian Patent Application No. PI/PA00/084971 filed June 16, 2000, and U.S. Provisional Application 60/219,827 filed on July 21, 2000, to recalculate the publication date and Paris convention time periods and to expunge the certified copy of the Panamanian Patent Application from the file wrapper of the instant application. The petition included a copy of a new declaration which omits the foreign priority claim so as to delete the claim for priority.

The petition is **granted-in-part**.

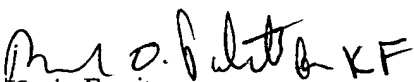
The request to delete the priority claim to Panamanian Patent Application No. PI/PA00/084971 filed June 16, 2000, and the benefit claim to U.S. Provisional Application 60/219,827, filed on July 21, 2000, is granted. It is noted that applicant had not amended the first sentence of the specification to claim the benefit of the provisional application as required by 35 U.S.C. 119(e), so no amendment is necessary to cancel the reference. A replacement filing receipt is attached showing that the claims have been removed. The publication date has not been recalculated, however, since the application published on December 20, 2001 as United States Patent Application 2001/0054019 A1.

The certified copy of the Panamanian Patent Application will not be expunged from the file wrapper of the instant application because there is no showing that the priority document was submitted in the wrong application, or that it contains proprietary information. Furthermore, since the application has already published, the prior application has already been made public and it would not be appropriate to expunge the document from the patent application. See MPEP §§ 724.02, 724.05 and 724.06.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. See 35 U.S.C. § 41(c)(7). The required \$130 petition fee was required for consideration of this petition, and will not be refunded.

Any inquiries concerning this decision may be directed to Mark Polutta at (703) 308-8122.

This application is being forwarded to Technology Center Art Unit 2624 to await further examination in due course.


Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy